

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JENNIFER RUTH SMITH,

Plaintiff,

vs.

CIV. NO. 1:15-cv-00301-SMV

**CAROLYN W. COLVIN,
Acting Commissioner of
Social Security,**

Defendant.

ORDER

Upon consideration of the parties' joint stipulation for fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412 et seq. (Doc. 28), and good cause appearing, **IT IS**

HEREBY ORDERED:

1. Defendant will pay Plaintiff a total of \$1,579.20 in EAJA fees. This amount is payable to Plaintiff, not directly to her counsel. Payment will be sent to the office of Plaintiff's attorney: Feliz M. Martone, Esq.; Martone Law Firm; 111 Lomas Blvd. NW, Suite 500; Albuquerque, NM 87102.

2. Defendant's payment of this amount bars any and all claims Plaintiff may have relating to EAJA fees and expenses in connection with this action.

3. Defendant's payment of this amount is without prejudice to Plaintiff's counsel's right to seek attorney fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. If Plaintiff's counsel ultimately receives attorney fees under both the EAJA and section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

4. This Order will not be used as precedent in any future cases, and should not be construed as a concession that the Commissioner's administrative decision denying benefits to Plaintiff was not substantially justified.

SIGNED: November 25, 2015



STEPHAN M. VIDMAR
UNITED STATES MAGISTRATE JUDGE

SUBMITTED AND APPROVED BY:

Filed Electronically 11/25/2015

MANUEL LUCERO

Assistant United States Attorney

Electronically approved 11/20/15

FELIZ M. MARTONE

Attorney for Plaintiff